THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18744 OF 2006

DATED:4-06-2007

Between :

1. Arava Narasimhulu and another. .. Petitioners

And

Special Deputy Collector (LA) Unit-II,
Telugu Ganga Project, Kadapa,
Kadapa District. .. Respondent

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ORDER :

The petitioners herein claim to be the owners of Ac.1-48 cents and Ac.1-02 cents of land situated in Sy.No.227/3 and 220/1 respectively of Brahmanapalle Village, Gopavaram Mandal, Kadapa District. The said land was acquired under Notification dated 26-10-2005 published under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the Act'). Pursuant thereto, an award was passed under Section 11 of the Act on 28-3-2006 fixing compensation payable to the petitioners and the amount so determined was also paid to the petitioners by way of cheques on 29-3-2006. However, having realised that no compensation was fixed towards structures, the petitioners made representations on 29-3-2006 seeking payment of compensation towards structures existing on the land acquired. According to the petitioners, they are entitled to get compensation of Rs.10 lakhs towards value of structures existing on the said land. Since the respondent neither considered their representations dated 29-3-2006 nor referred the matter under Section 18 of the Land Acquisition Act, this writ petition has been filed with the following prayer :

> *"... .... may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or orders, direction or directions declaring the action of the respondent in not paying compensation to the petitioners towards the structures standing on the land while acquiring the lands of the petitioners through Award No.2/2005-2006, dated 28-3-2006 as arbitrary and unconstitutional and to issue a consequential direction to the respondent to pay compensation to the petitioners towards the structures*

standing on the lands of the petitioners situated in Sy.No.227/3 and 220/1, Brahmanapalle Village, Gopavaram Mandal, Kadapa District."

A counter-affidavit has been filed by the Special Deputy Collector (Land Acquisition), Telugu Ganga Project, Unit-II, Podalkur in which the fact that land belonging to the petitioners to the extent of Ac.1-02 cents and Ac.1-48 cents was acquired under the Land Acquisition Act has not been disputed. The fact that certain structures were existing on the land of the petitioners is also not in dispute. However, it is stated that as per the report submitted by the Joint Collector, Kurnool who inspected all the lands proposed for acquisition, the said structures were found to be newly formed with an intention to claim compensation from the Government and accordingly it was recommended that no structural value need be paid but the owners of the structures may be allowed to take away their structural material. It is also stated that during the award enquiry the petitioners had given their consent to exclude the existing structures and to pay compensation only to the land. Accordingly, basing on the consent given by the petitioners, an award was passed fixing the compensation. Though the fact that the petitioners had made representation requesting for payment of compensation towards structures has not been disputed, it is contended that since the structures were raised long after the publication of the 4 (1) notification they are not entitled to receive any compensation as agreed by them in the award enquiry.

I have heard the learned Counsel for the petitioners as well as the learned Government Pleader appearing for the respondents.

It is to be noted that in the affidavit filed in support of the writ petition, it was categorically stated by the petitioners that they have never given up their claim for compensation towards structures and that the version of the respondent that the petitioners had waived their right to receive the compensation towards structures is incorrect. It is

also pleaded by the petitioners that they are illiterates and that they came to know about the denial of compensation towards structures only after the award was passed and the compensation was paid to them on 29-3-2006.

Whereas the petitioners claimed that structures are existing on the lands acquired and that they are entitled for compensation towards for the value of the structures as well, it is contended by the respondent that the structures were raised after Section 4(1) Notification was issued with an intention to claim more compensation and that the petitioners themselves waived their right to receive compensation towards structures during the award enquiry.

The rival claims made by the parties which involve disputed questions of fact cannot be enquired into and decided by this Court in a writ proceeding.

However, since admittedly the petitioners had not accepted the award passed by the Land Acquisition Officer and raised a dispute as to non-payment of compensation towards structures within the time stipulated, I am of the opinion that it is a fit matter for reference under Section 18 of the Land Acquisition Act.

In the circumstances, it is in the interest of justice to treat the representations of the petitioners as applications made under Section 18 of the Act for reference to the Court for determination of the claim made by the petitioners towards structures, in which event, on appreciation of the evidence that may be produced, the Competent Court would record a finding as to the rival claims made by the parties, including the question whether the petitioners had waived their right to receive compensation towards structures during the award enquiry.

Accordingly, the Writ Petition is disposed of with a direction to the respondent to consider the representations made by the petitioners in terms of Section 18 of the Act and to pass appropriate orders for reference to Civil Court in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of

receipt of this order. No costs.

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G. ROHINI, J.

Dt. 04–06-2007
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